

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
October 28, 2003**

PLACE: Room 206
Town Hall

TIME: 8:01 P.M.

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Spain, Bigelow, Forman, Conze and Kenny

STAFF ATTENDING: Ginsberg, Keating

Chairman Damanti explained that the Ward application for 32 Beach Drive had been withdrawn and that the Quest application regarding property at 537 Boston Post Road and Olsson property at 11 Pratt Island had both been postponed. They will be rescheduled for a future date.

Chairman Damanti read the following agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #188, Flood Damage Prevention Application #199, Land Filling & Regrading Application #106, Foster Kaali-Nagy, 59 Five Mile River Road. Proposing to raze the existing residence and construct a new single-family residence and perform related site development activities within regulated areas. The subject property is on the northeast side of Five Mile River Road, approximately 170 feet east of its intersection with Berry Lane, and is shown on Tax Assessor's Map #66 as Lot #10, in an R-1/2 Zone. *PUBLIC HEARING OPENED SEPTEMBER 23, 2003.*

Mr. Damanti explained that the application was first discussed at a Public Hearing on September 23rd and that the Public Hearing was continued so that decisions from the Zoning Board of Appeals and Environmental Protection Commission could be part of the input to the Planning & Zoning Commission. Since that time the Zoning Board of Appeals has granted variances subject to a number of conditions and stipulations. The Environmental Protection Commission has still not decided on the application pending before them.

Attorney Phil Toohey submitted a copy of the deed and reiterated that the ZBA variance had been granted and that the EPC application was still pending. He also submitted letters of support from several neighbors.

Holt McChord, Professional Engineer, explained that they have tried to achieve a balanced solution. The existing property of 0.188 acres is in an R½ Zone and the property is also in the flood hazard zone with the expected flood level being 12 feet above sea level. There is an existing house that they plan to demolish. The replacement house will contain 4 bedrooms and would have the driveway on the west side of the house and would lead down to the basement or lower level of the structure. The first floor of the house would be slightly higher than the street level and access from the back of the house to the backyard would be via a patio and terrace and stairs. A retaining wall is proposed to separate the terrace and patio area from the natural area adjacent to the Five Mile River. They have applied to the EPC for mediation and planting work to take place within the area between the retaining wall and the shoreline.

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Mr. McChord said that the submitted plan eliminates the parking that currently exists very close to the street. It also places the driveway on the westerly edge of the property so that it is as far away from the large curve in Five Mile River Road (the curve is to the east of the site). He said that the Zoning Board of Appeals granted variances of the front yard setbacks and that the proposed building would have less building coverage and less impervious area than the existing structure. He said that storm water drainage would be collected and discharged into two shallow galleries so that it will not be discharged directly into the Five Mile River. He said that special driveway material will also be used to minimize surface water runoff.

In response to questions and comments regarding the coastal site plan review process and the flood hazard zone, Mr. McChord said that the proposed garage elevation would be 8.5' above sea level and the first floor would be 17.5' above sea level. He said that the retaining wall separating the development activity from the restoration area (along the shore) would be a 6 or 7' high stone wall. He said that the comments from John Gaucher of the Connecticut Department of Environmental Protection (DEP) raise concerns about the visual character of the wall but Mr. Gaucher was clear that the decision about the wall was left up to the Planning & Zoning Commission. He said that the retaining wall was used to preserve the existing grades to the extent possible and therefore to preserve existing trees along the side lines. He said that he could add a few steps at the back of the house so that he could lower the proposed terrace slightly and that this would lower the height of the retaining wall. He said that the Environmental Protection Commission seems to desire to have a wall to separate the active portion of the site that people will frequently use from the natural habitat and planting restoration area immediately adjacent to the river. He said that plantings will soften the view of the wall from the river side and that the wall would not be seen by people on the street or the neighbors.

With respect to the proposed building design, Mr. McChord said that an issue has been raised about whether the lower level or garage level would be considered a basement. He said that flood damage prevention vents in the garage door will allow the flood water to pass through the structure so there will be an equalization of water pressure. He said that they can eliminate the finished portion of the lower level and therefore the entire space would be unfinished garage.

In response to a question from a Commission member about the possibility of using a fence to satisfy the EPC's desire to separate the actively used portion of the site from the immediate shoreline and wildlife habitat area along the river, he was told that the fence might provide the separation, but it would not retain the soil necessary to hold up the terrace.

Alex Kaali-Nagy said that the crawl space slab would be 4' below the first floor and that the garage slab would be 9' below the first floor. Mr. McChord said that approximately 320 cubic yards of fill material would be needed for the terrace. Approximately 120 cubic yards would come from the excavation for the new house foundation, they would need to import approximately 200 cubic yards of fill. He said that the existing grades around the existing house vary from Elevation 9 to Elevation 15 plus or minus.

Mr. Conze said that the proposed new house would be much higher than the existing house and that it seems to be out of character and scale with the small property and close proximity of the house to the street. It was noted that the Zoning Board of Appeals had denied the large cupola. From the ground to the top of the cupola shown on the submitted plans, it appeared to be 38 feet. Mr. Kenny

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said it would be appropriate to superimpose a photo of the existing structure on the proposed architectural drawings to get an idea of how massive the proposed new structure would be. Commission members asked if it was possible to lower the garage and therefore lower the first floor. Mr. McChord said that doing so would impact other aspects of the project and would probably not work. Mr. Conze said that they should lower the overall height of the building and in particular remove the living space in the attic level. Mr. Kaali-Nagy said the attic level is directly under the roof and they have already modified the design to lower the eave lines. He said that they need the living space in the attic to make up for the small footprint.

Mr. Spain said that there is a problem with creating the garage at such a low elevation. It will be susceptible to frequent flooding and, although the garage does not need to be above the expected flood level, there must be a better design. Another issue of concern was the high sea wall. He suggested that they use a set of lower walls to create a terraced effect. He said that the view from the river is a critical public asset and creating a massive retaining wall is not appropriate. Mr. Bigelow said that it might be appropriate to have a turn around in the front yard and avoid requiring that vehicles back into the street. He did concur with the applicant's characterization of the EPC's position about having a definitive separation between the portion of the site that will be actively used by the residents and the natural area to be preserved along the shoreline.

Attorney Toohey said that the application is still pending with the Environmental Protection Commission. Mr. McChord recognized that the Zoning Board of Appeals was concerned with the height of the proposed building, but they were concerned about how it looked from the street, not how it would look for the river. Mr. Spain said that the topography of the site should be changed as little as possible and that the house should be as low as possible to comply with the regulations and with the character of the area. He said that the plan has some positives, but there is much work to be done.

The Commission concluded that they need to continue the Public Hearing so that the input from the Environmental Protection Commission can be part of the application. The following motion was made: that the Commission continue the Public Hearing regarding this matter on November 25, 2003. The motion was made by Mr. Conze, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

Continuation of Public Hearing regarding Subdivision Application #603, David & Sabina Harris, 1749 Boston Post Road. Proposing to subdivide the existing 2.004 acre property into three lots and an open space parcel and perform related site development activities. The subject property is located on the north side of Boston Post Road, approximately 700 feet west of its intersection of Renshaw Road, and is shown on Tax Assessor's Map #41, as Lots #5 and #6 in the R-1/3 Zone. *PUBLIC HEARING OPENED SEPTEMBER 23, 2003.*

Land Surveyor Jeff McDougal from William Seymour & Associates said that they have discussed the project with officials from the Connecticut Department of Transportation (DOT). These discussions included possible sidewalks along the Boston Post Road and new driveway locations. The state officials would like a snow shelf between the travel portion of the road and any new sidewalk. Mr. McDougal said that the applicant has received approval from the Environmental

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Protection Commission and they have revised the plan slightly to reflect the EPC's approval. He submitted copies of the revised plans.

Mr. McDougal said that there are very tall hedges that currently shield the property from the activity on Boston Post Road (Route 1). The existing driveway is not located directly at the traffic light, but is close by. He said that the proposed two new lots will be served by one combined driveway to the Boston Post Road.

John Martucci said that the traffic signal also controls the neighbor's driveway and that the Boston Post Road takes a large curve at that location. He said that there is a signal face in the direction of the neighbor's driveway. In order to approve sight line visibility, the power poles would need to be addressed. Mr. Martucci said that can only be done by the utilities and by Connecticut DOT. Mr. McDougal said that the Connecticut DOT's final comments on the revised plans have not yet been received, but he emphasized that the applicant's proposal is to create two new lots that are each oversized for the R-1/3 Zone in which they are located.

Mr. McDougal said that the applicant intends to build one new house on the north lot while preserving the two existing houses on the site. Each of the existing houses would be on its own separate lot. At some point in the future they would consider knocking down the rear house (which would be on the center lot) and constructing a replacement house closer to the Boston Post Road.

There was some discussion about the width of the Boston Post Road right of way and the width of the right travel lane within the street. Mr. McDougal commented that the utility poles immediately adjacent to the travel portion of the street give a perception that the road is actually more narrow than it is. Mr. Kenny said that the travel lane is actually 2 or 3 feet less in width than in other portions of the Post Road. He asked what could be done to fix this situation. He asked if restriping the area would be a possible solution. Mr. Martucci said that the widening of the street would be a DOT issue, but Mr. Martucci said that the street right of way is not very wide at the curve. He acknowledged the fact that drivers have a "shy distance" where drivers leave extra space from the service poles because they form a visual obstruction immediately adjacent to the travel lane.

David Harris, owner of the property, said that he will let the existing driveway continue to serve the main house on the property and the rear house on the lot. He said this will continue for another year or two or until the rear structure is removed and replaced with a new house.

Mr. McDougal and Mr. Martucci noted that the DOT officials seem to want to create a new 4' wide sidewalk and a snow shelf to separate the travel portion of the street from the sidewalk.

There were no comments from the public and no further questions or comments from the Commission. The following motion was made: that the Commission close the Public Hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mr. Bigelow and unanimously approved.

Chairman Damanti read the following agenda item:

Coastal Site Plan Review #125-A, Flood Damage Prevention Application #123-A, John B. Ward, 32 Beach Drive. Proposing to construct additions and alterations to the existing residence and

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perform related site development activities within regulated areas. The subject property is located on the west side of Beach Drive approximately 225 feet south of its intersection with Outlook Drive, and is shown on Tax Assessor's Map #53, as Lot #6 in the R-1/2 Zone. *POSTPONED*.

Mr. Damanti said that this application had been withdrawn and would not be rescheduled unless a new application was submitted.

Chairman Damanti read the following agenda item:

Special Permit Application #233, Quest Diagnostics, 537-557 Boston Post Road. Proposing to establish a clinical laboratory within a portion of the first floor of the existing building. Subject property is located on the northwest side of Boston Post Road approximately 550 feet east of its intersection with Brookside Road, and is shown on Tax Assessor's Map #14 as Lot #36 in the DB-2 Zone. *POSTPONED UNTIL NOVEMBER 25, 2003*.

Mr. Damanti said that this matter has been rescheduled and the Public Hearing will be held in November.

Chairman Damanti read the following agenda item:

Special Permit Application #232, Daniel Lovegrove, 174 West Avenue requesting clarification, and if necessary, Special Permit approval to continue the use of the first and second floors of the existing house at 174 West Avenue as a single family, residential use in the Service Business (SB) Zone. The property is located on the north side of West Avenue, approximately 500 feet east of Herman Avenue, and is shown on Tax Assessor's Map # 20 as Lot # 12, and is located in Service Business (SB) and R1/3 (Residential) Zones.

Architect Robert Young represented the applicant and explained that the property is in both the Service Business (SB) and R1/3 (residential) zones. The owner wishes to continue the residential use of the property. He said that the building was constructed in 1923 and subsequent to that time the Service Business Zone has been created along West Avenue. The Service Business Zone extends 100' in from the street right-of-way. The house is within the Service Business Zone but continues to be used as a dwelling. The Zoning Regulations allow a dwelling in the Service Business Zone only if it is on the second floor. Ground floor dwellings are not permitted in the Service Business Zone because that area would typically be used as a service business. Mr. Young noted that the existing detached garage on the rear portion of the property is in the R-1/3 Zone because it is more than 100' from the street. He said that his client, Mr. Lovegrove, purchased the property in 2001 and has already received approvals from the Planning & Zoning Commission and Public Works Department to make improvements to the driveway to make the situation safer. Those improvements are adjacent to the West Avenue portion of the site.

Mr. Young explained that it is believed that the continuation of the residential use of the entire house is a legally nonconforming, "grandfathered" situation but the applicant has requested verification in writing from the Planning & Zoning Commission.

Commission members discussed their knowledge of the history of the site and recognized that the residential use predated the establishment of the Service Business Zone. Mr. Spain said that the

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Commission should not set a precedent that all such requests need to come before the entire Planning & Zoning Commission. He said that in this case a letter from the staff should be sufficient to verify in writing that the continued use of the entire house as a residence is a legally nonconforming use and may therefore continue.

There were no comments from the public. The following motion was made: that the Commission close this portion of the Public Hearing regarding this matter. The motion was made by Mr. Kenny, seconded by Mr. Bigelow and unanimously approved.

Chairman Damanti read the following agenda item:

Flood Damage Prevention Application #151-C, Land Filling Application #109, James & Jodie Bishop, 22 Brush Island Road. Proposing to relocate septic system and construct a swimming pool with associated retaining walls and regrading and perform related site development activities within regulated areas. Subject property is located on the south side of Brush Island Road approximately 1000 feet west of its intersection with Nearwater Lane, and is shown on Tax Assessor's Map #56 as Lot #11 in the R-1 Zone.

Architect Paul Harris represented the applicant and explained that the proposal involves construction of a swimming pool in the backyard of the house that is currently being constructed. To accommodate the swimming pool, they will need to undertake some regrading of the property. The maximum height of the stone retaining wall proposed by the plan is 2'6" (or 30"). A pool safety fence, required by the building code, will surround the pool area and the fence will be 4' tall. The fence will not be very visible from the waters of Holly Pond due to the distance from the shore and the fact that the beach area and adjacent grass area separates the pond from the pool area.

The proposed pool is proposed to be within a flood hazard zone. The applicant has provided engineering certification indicating that the filling and regrading will not adversely affect flood conditions on any other properties and that the pool has been designed to withstand the flood forces and that the pool equipment will be elevated above the expected flood level. The existing septic tank must be relocated slightly to accommodate the proposed pool. This aspect of the project has been reviewed and approved by Vince Proto of the Darien Health Department.

Commission members noted that a letter from Peter Kranz, an adjacent property owner, has been received. Mr. Kranz indicates no objection to the proposed application.

There were no comments from the public. The following motion was made: that the Commission close the Public Hearing regarding this matter. The motion was made by Mr. Kenny, seconded by Mr. Conze and unanimously approved.

Special Permit Application #22-N, Coastal Site Plan Review #27-C, Flood Damage Prevention Application #20-C, Tokeneke Club, 4 Tokeneke Beach Drive. Proposing to modify and construct improvements to the existing clubhouse and perform related site development activities within regulated areas. The subject property is on the south side of Butler's Island Road south and east of its intersection with Tokeneke Beach Drive, and is shown on Tax Assessor's Map #67, as Lot #83 in the R-1 Zone.

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Members Fred Conze and Peter Bigelow explained that they are members of The Tokeneke Beach Club and, although they have no conflict of interest and could listen to and act upon the application objectively, to eliminate any doubt, they will recuse themselves from this matter.

Mr. Spain said that he is also a member of The Tokeneke Beach Club and noted that, in order for the Commission to maintain a quorum, he would remain at the meeting. He said that he had not attended the previous Public Hearing regarding The Tokeneke Beach Club because he was absent, not because of any potential conflict. He said that he has no conflict of interest regarding the application. Mr. Conze and Mr. Bigelow left the room. Mr. Spain went to the back of the room and did not participate in the discussion but he was in attendance at the meeting.

Attorney Wilder Gleason represented The Tokeneke Beach Club and explained that this is a new application to the Planning & Zoning Commission. The property in question is on the south side of Butler's Island Road and is immediately adjacent to Long Island Sound. It is shown on Tax Assessor's map 67, as Lot No. 83. Attorney Gleason said that the Club also owns a 10 plus or minus acre parcel located across the street. The other property is on the north side of Butler's Island Road and it is partially covered by Butler's Creek, an inlet from the Five Mile River.

Attorney Gleason explained that The Tokeneke Beach Club is requesting that the existing Special Permits be amended. He said that the proposed uses of the site will remain unchanged and that the modifications to the structure will not adversely impact any coastal resources and will not be contrary to any regulations or policies. He said that the existing building was approved and built approximately 40 years ago and there have been many changes in the codes and requirements since then. The proposed modifications to the building are relatively minimal improvements to meet the upgraded code requirements. Approximately 387 square feet of floor area will be added to the building and they will be reducing a portion of the practice tennis court area.

Attorney Gleason said that they have obtained a variance from the Zoning Board of Appeals, Calendar 75-2003, to slightly increase building coverage. Another variance is the building setback from the mean high water line. The third variance is to keep a small office on the first floor of the building. The first floor is at approximately elevation 8 or 9 feet above sea level. The expected flood level in the area is 15 feet above sea level and the Flood Damage Prevention Regulations would require that the lowest floor be two feet above the expected flood level (or 17 feet above the sea level). The applicant proposes to rebuild the snack bar on the ground floor for the convenience of the members and users of the site. The Club has hired Professional Engineer, John Roberge, to finalize the design of the modifications. These modifications will include knock out walls or walls resistant to flood damage.

Attorney Gleason reviewed the changes to the building to bring it into compliance with various codes and regulations. The modifications include redesigning the front entrance to comply with handicapped access requirements. An elevator will be installed so that people can be transported from the ground floor entry up to the dining room that is located on the second floor. There will be two, low, tower-like structures. One will house the cab or passenger compartment and the other tower will house the equipment. This type of design minimizes the need for a single tall tower and also allows the passenger compartment to be at rest on the second floor so that it would not be damaged by any potential flood condition.

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The existing chimney structure will be removed from the building; the staff locker room area will be changed and the staff bathroom and lounge area will be modified; the snack bar and kitchen areas will be revised and upgraded to comply with health code requirements; and the food storage shed and refrigeration unit will be renovated and replaced as necessary also to comply with Health Code requirements. Attorney Gleason submitted a copy of a portion of the Health Code and a May 10, 2003 letter from Vince Proto of the Darien Health Department. Other proposed changes to the building include installation of a dumbwaiter to transport materials between the first floor and the second floor; a new roof over the porch dining area will replace the existing awnings; the second floor kitchen will be expanded slightly to meet Health Code requirements; and a new means of egress from the second floor will be created. That means an egress must be remote from the primary access (the stairs and the new elevator) and, therefore the new stairs will be located on the opposite side of the building. Attorney Gleason submitted a May 21, 2003 letter from the Fire Marshal.

It was noted that the work of John Roberge, Professional Engineer, indicates that the flood hazard area at the building is most likely to be a still water flood condition lower than Elevation 15, but the Club wants to make sure that the building and its members will be protected in all types of situations and, therefore has designed the additions to comply with the more restrictive flood conditions expecting wave velocities and the crest of waves to be up at Elevation 15.

Attorney Gleason submitted a copy of the May 29, 2003 letter of approval from the Architectural Review Board. It was noted that Zoning Board of Appeals resolution for Calendar 75-2003 is in draft form but has not yet been finalized.

Architect Bruce Beinfield said that the concrete slab structure has steel cables throughout. They are very reluctant to cut holes through the existing concrete walls because it could substantially impact the structural strength of the building. He said the expansions proposed for the building have been specifically designed to avoid cutting the cables that would weaken the structure. He noted that internal changes of the dining room and bar area and kitchen area actually result in losing approximately 360 square feet of patron accessible area.

In response to questions about membership and use of the facility, Club Manager, James Morlock, said that the Club currently has 315 full season members/families. He said that this is a self-imposed limit by the Board of Directors of the Tokeneke Beach Club. They also have 20 non-resident members who live more than 50 miles away but have maintained memberships. Although they have the privilege of using the Club, they seldom take advantage of that privilege. Mr. Morlock said that there will be no change in membership due to the proposed modifications of the building. In response to questions about occupancy, Mr. Morlock said that special events such as the summer opening party, Fourth of July fireworks, several dances and swim meets are the busiest time for the Club. He said that they work closely with the Tokeneke Association Police (a private police force employed by the Tokeneke Association in which the Club is located) to assist with parking conditions. Mr. Morlock said that the upstairs of the dining room has a seating capacity of approximately 150 people, but if they remove the tables and have the area for a cocktail party, they can accommodate 300 people. For such an event, they would need a staff of 20 to 30 people.

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Attorney Gleason said that there will be no change in the use or membership or intensity of use. The modifications to the building are to bring things into compliance with the relevant health and safety code requirements. He said that there is a Special Permit limitation that music must be turned off at 11:00 p.m. He said that the restriction is strictly enforced by the Club. He said that they have brought their engineer with them in case the Commission has any questions about the storm water drainage. The engineer has already determined that the proposed modifications to the building and site will not have any adverse drainage impacts. Attorney Gleason said that there will be no adverse impacts to any coastal resources.

In response to questions about parking, Club Manager, James Morlock, said that there are 135 to 145 parking spaces available for Club use. Some of these parking spaces are located across the street (on the large parcel owned by the Club and adjacent to Butler's Creek). In response to a question about having a separate access for an elevator at a different location, Attorney Gleason said that they cannot install the elevator at a back door entrance to the restaurant because that would not be in compliance with the Americans with Disabilities Act. It would not afford a handicapped person reasonable or equivalent access into the site if they needed to come through a back door.

In response to additional questions, Mr. Gleason noted that they are redoing the receiving storage sheds for food and other materials. Mr. Beinfield said that they will be elevating the existing electric transformer from the ground so that it will no longer be in the flood hazard area. They have not yet done so, but they will be designing some form of back-up power for the elevator.

Lilly Barston said that she has been a resident of Tokeneke since 1959 and at one point lived across the street from the Beach Club. She expressed concerns about the intensity of use and the character of the Beach Club changing from a neighborhood oriented club to one that has many out of area members. She said that the member families have approximately 507 children, 372 of whom are under 16. She said that utilizing the numbers provided by the Club could result in approximately 1,212 total people using the Club facilities or at the Club locations on a summer day. She said that there is not enough on-site parking to accommodate such an intense use with so many out of area visitors. Even though the Club site is 5.04 acres, much of this site is not available for use as parking area because of the buildings, beach, and tennis courts. She said that although the site across the street might be 10.1 acres, approximately 9 acres is located under water and is therefore not usable as parking area. She said that according to a 1980 map of the site, approximately 43.5% of the lot area was covered by structures. Now the map shows that approximately 35% is covered by structures.

Mrs. Barston said that this is phase one of a long term master plan for the expansion of the Club. She submitted a map and referred to a letter dated December 4, 1981 to Seeley Hubbard from Planning and Zoning Director, Raymond Nurme. This letter indicates that the site is one of the most intensely developed use within Darien and is located within a fragile, coastal area. Mrs. Barston said that a private club like this does not need to meet the standards and requirements of the Americans with Disabilities Act nor does it need to have a stairway shaft as huge as the one that exists nor does it have to have an elevator. It has worked fine for many years without having an elevator.

Mrs. Barston said that the problems with the Club include too many people using too few parking spaces, and that they would be adding bathrooms and not addressing the septic problem. She said

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that the smells during the summer are disgusting and that last summer samples were collected and given to Vince Proto of the Health Department. She suspected that these samples were leaking effluent from the failing septic system. Mrs. Barston said that what used to be a small, neighborhood oriented private club is now turning into a public facility with many meetings and events and activities. She said that it is used 24/7 during the summer season and that people park all over the street and create a safety hazard because such parking inhibits clear and easy access through the private streets. She referred to a July 1, 1968 letter that she said was a reprimand for filling for the parking area. She referred to a map dated August 17, 1981 that is referred to as Exhibit 4. A chronology of events was submitted and it is labeled as Exhibit 6.

Attorney Wilder Gleason said that the difference in the building coverage calculation is due to the changes in the shoreline location that have occurred since 1980. The current map is dated February 2, 2003 and goes by the new definition of mean high water which is Elevation 4.3 feet above sea level. He said he could not explain other differences in the coverage calculations but noted that the definition of building coverage was changed by the Commission in the mid 1980's.

Mrs. Barston said that the beach loses sand due to currents and storm actions. The Club has approvals for beach nourishment but they can only replace 10,000 cubic yards of sand. There was some discussion about two pages of a letter from Gene Markowski. Mrs. Barston said that the mailing to the membership of the Club concerned Phase 1 of the modifications and it was sent by the Long Range Planning Committee of the Board of Directors of the Tokeneke Beach Club. She said that the Club should not be allowed to become a public, money oriented use. It should stay as a neighborhood oriented club.

Attorney Robert Maslan of Maslan Brown Associates represented the Dean family and the Perrone family. They are adjacent property owners and they object to the proposed modifications. Attorney Maslan said that he agreed with much of what Mrs. Barston had said and would not repeat those items. Attorney Maslan said that he is concerned about the quorum issue but understood that would need to be resolved by the courts. Mr. Damanti said that Mr. Spain was present at the meeting in order to maintain quorum but that he, Mr. Spain, had not participated in any of the discussions.

Attorney Maslan said that the applicant has offered no information about the septic system. He referred to the July 13, 1976 letter from the health official and the other letters stapled to it. He said that there is no information about the location, conditions or sufficiency of the septic system. He also said that there is no information provided by the applicant about the adequacy of the parking or the other problems causing parking on the street.

Attorney Maslan said that the current surveyor might be counting the jetty that projects out into Long Island Sound as part of the lot area. He said that this should not be counted under Section 210 (the definitions) of the Darien Zoning Regulations. Attorney Maslan said that there was a letter filed in the Darien Land Records in 1998 that is an agreement between the Deans and the Club and indicates that the Club will not seek future variances to change or expand the use.

Rick Perrone of 25 Butler's Island said that the Club is an intensely used site and from his house and from the water it has a very unsightly appearance. He is not happy with the past performance of the Club or with the current proposal. He said that there is a massive parking problem at the Club and that parking spills out into the street providing access to Butler's Island. He said that he

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has complained about the parking problem to the Club and to the Tokeneke Police and to the Tokeneke Association but nothing changes. He said that the parking problem persists and that it is due to the large number of Club members who are not residents of the neighborhood. He referred to 6 to 10 previously submitted photographs of the parking problems and noted that they had been submitted for a previous file regarding this matter. He asked that they be moved or copied to the present file. He then submitted 13 pages of additional photographs. All but one page contained two photographs each. Mr. Perrone said that there is inadequate parking at the site, particularly at peak periods of use. He said this has existed since the Club had only 250 member families and now they have 315 member families. He said that the Club has more private parties than in the past and the private parties create a parking problem. He said that on at least two occasions the Club has had to bus people into the facility because there was not enough on-site parking.

Mr. Perrone said that he has noticed that recently the Club has brought in large amounts of sand and deposited them on the upper portion of the beach. He said that music and noise created by the Club is a continuing problem. He said that the music is not turned off by 11:00 p.m. as is required. He said that people swim and make noise even at midnight. On weekends the noise and activities continue long after the curfew. Mr. Perrone said that the septic system issues are of concern.

Lily Barston referred to the February 26, 1996 letter from Mr. Markowski regarding the beach renourishment.

Attorney Wilder Gleason said that there is no record of parking complaints to the Town Traffic Authority or to the Town police. Jim Morlock, Club Manager, said that in the 1960's the decision was made to increase the membership from 265 to 315 member families. Since then there has been no increase in membership. Attorney Gleason said that he is not aware of any health code complaints or citations. Mr. Morlock said that in 1997 there were alterations made to the septic system so that there are now two separate systems and that they use those septic systems on an alternating basis so that one system will not become overburdened. He said that he was aware that last year a sample was brought to Vince Proto of the Health Department, but after the sample was tested, it was determined that there was no health problem or unsafe condition. He said that they have in the past, and will continue to work with the Health Department regarding any health code issues. These include the kitchen, septic system, and any other appropriate matters. Mr. Morlock said that the mounds of sand on the beach at this time were created by pushing up the existing top one foot of sand into stockpiles so that it will not be as likely to be washed away by the winter storms. He said that they have done this so that they will minimize the need for having to implement the beach nourishment program.

Mr. Morlock said that when the Club has been aware that a parking problem could be created, such as on the Fourth of July or some private parties, they have hired private buses so that people could park at the Tokeneke School and be brought to the Club. This has minimized the demand for on-site parking and traffic through the local neighborhood.

Attorney Gleason said that the Club does not sell beer in bottles and that any litter created by people leaving the Club is not from anything that the people have been given or purchased while at the Club. He said that the proposed modifications to the building do not change the use and do not expand the use. He said that the Letter of Agreement with the neighbors does not apply to the Planning & Zoning Commission decision. He said that he believes the letter stems from a 1981

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proposal to substantially raise the bath house. He referred to a 1981 letter from the then Director of Planning, Raymond Nurme. Attorney Gleason said that the Club is very concerned about the need for on-site parking and they will continue to work with the neighbors and the Tokeneke Police and the Tokeneke Association to avoid traffic, safety and parking problems. Peter Karpen, President of the Tokeneke Association, said that the Association has given full support to the Tokeneke Beach Club proposal. He said that the vast majority of the immediate neighbors are in support of the application.

Harris Hester, a member of the Club involved in the project, said that the long range plan discussed in the consultant's report has now been consolidated into the proposal before the Commission.

Attorney Wilder Gleason said that, although this is a private club, it must comply with handicapped access requirements of the Americans with Disabilities Act (ADA) because the public can attend private parties and functions at the facility. He said that by ADA standards this is a public facility even though it is a private club.

Lily Barston said that Steve Wiggins, a former resident of the property adjacent to the Tokeneke Beach Club, told her that he has witnessed the installation of gabions below the high tide line at the Club. This would be in violation of the Beach Replenishment Permit.

Rick Perrone said that the use of buses to transport people from off-site parking areas to the Club is a clear admission by the Club that the on-site parking is inadequate to deal with number of people attending the facility.

There being no further comments or questions, the following motion was made: that the Commission close the public hearing regarding this matter. The motion was made by Mrs. Forman and seconded by Mr. Kenny. Voting in favor of the motion were Mrs. Forman and Messers. Kenny and Damanti. Mr. Spain abstained from voting. The motion to close the hearing passed by a vote of 3 to 0 to 1.

There being no further business, the meeting was adjourned at 11:30 p.m.

Respectfully submitted,

David J. Keating
Assistant Director of Planning & Zoning